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22 August 1958

MEMORANDUM FOR THE RECORD

SUBJECT: War-Hazards Compensation Act, P.L. 85/608, Approved August 8, 1958

1. This review looks only to the standards and criteria applicable to compensation and care of employees of contractors who are providing goods and services at overseas defense bases, in the event of detention or injury by "a hostile force or person" while employed at an overseas base. It does not look to the criteria or benefits available to other categories of civilians serving at such bases.

2. Before attempting review, it is desirable to point out that the cited statute does little more than (1) draw together the related portions of the seven different statutes bearing on the various benefits available to the respective categories of civilians serving with the armed forces overseas, and (2) make permanent the provisions relating to war-risk hazards which heretofore required continuation or reenactment by Congress each year. These seven statutes are cited here for reference purposes as follows:

- (a) Act of September 7, 1916 (39 Stat. 742), as amended (5 U.S.C., ch. 15) (Federal Employees Compensation Act).
- (b) Act of March 4, 1927 (44 Stat. 1424), as amended (33 U.S.C., ch. 18) (Longshoremen's and Harbor Workers' Compensation Act).
- (c) Act of August 16, 1941 (55 Stat. 622; 42 U.S.C., 1651) (Defense Base Act).
- (d) Act of March 7, 1942 (56 Stat. 143), as amended (50 U.S.C. App. 1001) (Missing Persons Act).
- (e) Act of December 2, 1942 (56 Stat. 1028; 42 U.S.C. 1701) (so-called War Risk Hazards Act).
- (f) Section 5(b) of the act of July 28, 1945 (59 Stat. 505; 5 U.S.C. 801).
- (g) Section 4(a) of the act of July 3, 1948 (62 Stat. 1240; 50 U.S.C. App. 2003) (War Claims Act of 1948).

3. With regard to employees of contractors, two compensation systems in effect exist under the legislation. Although the first of these two does not relate directly to the present study, mention of it is necessary for clarification of the relationship between the applicable sections of the statutes referred to above, and in order to highlight the criteria established for the administration of the benefits provided for war-risk hazards.

a. The Defense Bases Act system under the act of August 16, 1941 (42 U.S.C. 1651). Under this act the contractor provides workmen's compensation protection for his employees on defense bases for normal employment injuries and disabilities occurring overseas or in transit thereto and therefrom, through commercial insurance in accordance with the standards and procedures established in the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901).

b. The war-risk hazard system (42 U.S.C. 1701), with which we are concerned, may be considered as supplementary in nature. It is designed to cover war-risk injuries and cases involving detention of contractors employees. Since such disabilities are not subject to workmen's compensation coverage, the expenses of settlements which are made by the insurance carrier are reimbursed under this legislation as a cost to the United States Government. This program is administered by the Bureau of Employees' Compensation (BEC), U.S. Department of Labor, under the Federal Employees Compensation Act (FECA). Monetary benefits, as distinguished from the medical benefits which are provided under FECA, are provided in accordance with the scale of compensation and the provisions for determining the amount of payment thereof, set forth in sections 906 to 910 of title 33, U.S.C., the Longshoremen's and Harbor Workers' Compensation Act. The war-risk coverage is not extended to those individual employees of contractors whose residence is normally in the vicinity of the place of employment unless they are injured or imprisoned while in the course of employment. Those who are required to live in the vicinity of the place of employment "solely by virtue of the exigencies of the employment" receive war risk coverage both on and off the job.

(1) Although settlement of claims may ordinarily be made by the insurance carrier with later reimbursement by BEC the Bureau at its option may request direct submission of claims for administration and payment by the Bureau.

(2) There is nothing contained in the act that would restrict a given Federal Agency from contracting with a supplier of goods and services, to reimburse him for losses sustained under the liabilities imposed on the contractor-employer under the Longshoremen's and Harbor Workers' Compensation Act where injury or detention was suffered by an employee. In such an instance, however, it is the request of BEC that they be notified in advance of such a contractual arrangement being implemented so that they might make the necessary arrangements within the Bureau and provide for the necessary briefings of District personnel who might be expected to handle the claims.

4. The term "war risk hazard" means any hazard arising during a war in which the United States is engaged; during an armed conflict in which the United States is engaged, whether or not war has been declared; or

during a war or armed conflict between military forces of any origin, occurring within any country in which a person covered by this act is serving; from--

(1) the discharge of any missile (including liquids and gas) or the use of any weapon, explosive, or other noxious thing by a hostile force or person or in combating an attack or an imagined attack by a hostile force or person; or

(2) action of a hostile force or person, including rebellion or insurrection against the United States or any of its allies; or

(3) the discharge or explosion of munitions intended for use in connection with a war or armed conflict with a hostile force or person as defined herein (except with respect to employees of a manufacturer, processor, or transporter of munitions during the manufacture, processing, or transporting thereof, or while stored on the premises of the manufacturer, processor or transporter; or

(4) the collision of vessels in convoy or the operation of vessels or aircraft without running lights or without peacetime aids to navigation; or

(5) the operation of vessels or aircraft in a zone of hostilities or engaged in war activities.

5. The term "hostile force or person" means any nation, any subject of a foreign nation, or any other person serving a foreign nation (1) engaged in a war against the United States or any of its allies, (2) engaged in armed conflict, whether or not war has been declared, against the United States or any of its allies, or (3) engaged in a war or armed conflict between military forces of any origin in any country in which a person covered by this act is serving.

6. As stated above, medical care for injuries or disabilities is provided under the authority of the Federal Employees Compensation Act administered by the Bureau of Employees' Compensation. The act provides in part at Section 9, "Medical, Etc., Services":

(a) That for any injury sustained by an employee while in the performance of duty, whether or not disability has arisen, the United States shall furnish to the employee all services, appliances, and supplies prescribed or recommended by duly qualified physicians which, in the opinion of the Administrator, are likely to cure or to give relief or to reduce the degree or the period of disability or to aid in lessening the amount of the monthly compensation. Such services, appliances, and supplies shall be furnished by or upon the order of United States medical officers and hospitals, but where this is not practicable they shall be furnished by or upon the order of private physicians and hospitals designated or approved by the Administrator. For the securing of such services, appliances, and supplies, the em-

ployee may be furnished transportation, and may be paid all expenses incident to the securing of such services, appliances, and supplies, which, in the opinion of the Administrator, are necessary and reasonable. All such expenses when authorized or approved by the Administrator shall be paid from the employees' compensation fund. The Administrator may, under such limitations or conditions as he shall deem necessary, authorize employing establishments of the United States to provide, for the initial furnishing of medical and other benefits under this section and the Administrator may certify for payment out of the Employees' Compensation Fund vouchers for expenses thus incurred for such benefits, upon certification by the person required by section 24 to make reports of injury that the expense was incurred in respect to injury which was accepted by the employing establishment as probably compensable under this Act. The form and content of such certification shall be prescribed by the Administrator. Any award heretofore made by the Commission on account of expenses incurred under section 9 of the Act of September 7, 1916, prior to the passage of this Act, shall be valid, if such award would be valid if made on account of expenses incurred under this section after the passage of this Act.

"(b) The Administrator may direct any permanently disabled individual whose disability is compensable under this Act to undergo vocational rehabilitation and shall make provision for furnishing vocational rehabilitation services in such cases. In providing for such services, the Administrator shall, insofar as practicable, utilize the services or facilities of State agencies (or corresponding agencies in Territories or possessions) cooperating with him in carrying out the purposes of the Vocational Rehabilitation Act, as amended, except to the extent that the Administrator provides for furnishing such services under subsection (a) of this section. The cost of providing such services to individuals undergoing vocational rehabilitation pursuant to such direction shall be paid from the employees' compensation fund, except that in reimbursing any State agency (or corresponding agency of a Territory or possession) under any arrangement pursuant to this subsection there shall be excluded any cost to such agency reimbursable in full under section 3 (a) (4) of the Vocational Rehabilitation Act, as amended."

7. Scheduled awards are made for the loss of a member or members of the body and compensation may be paid during periods of disability. As was indicated at paragraph 2(b) above, such benefits are payable under war-risk hazard in accordance with the standards set forth in the Longshoremen's and Harbor Workers' Compensation Act. It is there provided at section 908, "Compensation for disability":

"Compensation for disability shall be paid to the employee as follows:

"(a) Permanent total disability: In case of total disability adjudged to be permanent 662/3 per centum of the average weekly wages shall be paid to the employee during the continuance of such total disability. Loss of both hands, or both arms, or both feet, or both legs or both eyes, or of any two thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

"(b) Temporary total disability: In case of disability total in character but temporary in quality 662/3 per centum of the average weekly wages shall be paid to the employee during the continuance thereof.

"(c) Permanent partial disability: In case of disability partial in character but permanent in quality the compensation shall be 662/3 per centum of the average weekly wages, which shall be in addition to compensation for temporary total disability or temporary partial disability paid in accordance with subdivision (b) or subdivision (e) of this section, respectively, and shall be paid to the employee, as follows:

- (1) Arm lost, three hundred and twelve weeks' compensation.
- (2) Leg lost, two hundred and eighty-eight weeks' compensation.
- (3) Hand lost, two hundred and forty-four weeks' compensation.
- (4) Foot lost, two hundred and five weeks' compensation.
- (5) Eye lost, one hundred and sixty weeks' compensation.
- (6) Thumb lost, seventy-five weeks' compensation.
- (7) First finger lost, forty-six weeks' compensation.
- (8) Great toe lost, thirty-eight weeks' compensation.
- (9) Second finger lost, thirty weeks' compensation.
- (10) Third finger lost, twenty-five weeks' compensation.
- (11) Toe other than great toe lost, sixteen weeks' compensation.
- (12) Fourth finger lost, fifteen weeks' compensation.
- (13) Loss of hearing: Compensation for loss of hearing of one ear, fifty-two weeks. Compensation for loss of hearing of both ears, two hundred weeks.

(14) Phalanges: Compensation for loss of more than one phalange of a digit shall be the same as for loss of the entire digit. Compensation for loss of the first phalange shall be one-half of the compensation for loss of the entire digit.

(15) Amputated arm or leg: Compensation for an arm or a leg, if amputated at or above the elbow or the knee, shall be the same as for a loss of the arm or leg; but, if amputated between the elbow and the wrist or the knee and the ankle, shall be the same as for loss of a hand or foot.

(16) Binocular vision or per centum of vision: Compensation for loss of binocular vision or for 80 per centum or more of the vision of an eye shall be the same as for loss of the eye.

(17) Two or more digits: Compensation for loss of two or more digits, or one or more phalanges of two or more digits, of a hand or foot

may be proportioned to the loss of use of the hand or foot occasioned thereby, but shall not exceed the compensation for loss of a hand or foot.

(18) Total loss of use: Compensation for permanent total loss of use of a member shall be the same as for loss of the member.

(19) Partial loss or partial loss of use: Compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member.

(20) Disfigurement: The deputy commissioner shall award proper and equitable compensation for serious facial or head disfigurement, not to exceed \$3,500.

(21) Other cases: In all other cases in this class of disability the compensation shall be $\frac{662}{3}$ per centum of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but subject to reconsideration of the degree of such impairment by the deputy commissioner on his own motion or upon application of any party in interest.

(22) In any case in which there shall be a loss of, or loss of use of, more than one member or parts of more than one member set forth in paragraphs (1) to (19) of this subdivision, not amounting to permanent total disability, the award of compensation shall be for the loss of, or loss of use of, each such member or part thereof, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, paragraph (17) of this subdivision shall apply.

"(d) Any compensation to which any claimant would be entitled under subdivision (c) of this section excepting subdivision (c-21) of this section shall, notwithstanding death arising from causes other than the injury, be payable to and for the benefit of the persons following:

(1) If there be a surviving wife or dependent husband and no child of the deceased under the age of eighteen years, to such wife or dependent husband.

(2) If there be a surviving wife or dependent husband and surviving child or children of the deceased under the age of eighteen years, one half shall be payable to the surviving wife or dependent husband and the other half to the surviving child or children.

(3) The deputy commissioner may in his discretion require the appointment of a guardian for the purpose of receiving the compensation of the minor child. In the absence of such a requirement the appointment for such a purpose shall not be necessary.

(4) If there be a surviving child or children of the deceased under the age of eighteen years, but no surviving wife or dependent husband, then to such child or children.

(5) An award for disability may be made after the death or the injured employee.

"(e) Temporary partial disability: In case of temporary partial disability resulting in decrease of earning capacity the compensation

shall be two-thirds of the difference between the injured employee's average weekly wages before the injury and his wage-earning capacity after the injury in the same or another employment, to be paid during the continuance of such disability, but shall not be paid for a period exceeding five years.

"(f) Injury increasing disability: (1) If an employee receive an injury which of itself would only cause permanent partial disability but which, combined with a previous disability, does in fact cause permanent total disability, the employer shall provide compensation only for the disability caused by the subsequent injury; PROVIDED, HOWEVER, That in addition to compensation for such permanent partial disability, and after the cessation of the payments for the prescribed period of weeks, the employee shall be paid the remainder of the compensation that would be due for permanent total disability. Such additional compensation shall be paid out of the special fund established in section 944 of this title.

"(2) In all other cases in which, following a previous disability, an employee receives an injury which is not covered by (1) of this subdivision, the employer shall provide compensation only for the disability caused by the subsequent injury. In determining compensation for the subsequent injury or for death resulting therefrom, the average weekly wages shall be such sum as will reasonably represent the earning capacity of the employee at the time of the subsequent injury.

"(g) Maintenance for employees undergoing vocational rehabilitation: An employee who as a result of injury is or may be expected to be totally or partially incapacitated for a remunerative occupation and who, under the direction of the Secretary as provided by section 939(c) of this title, is being rendered fit to engage in a remunerative occupation, shall receive additional compensation necessary for his maintenance, but such additional compensation shall not exceed \$25 a week. The expense shall be paid out of the special fund established in section 944 of this title.

"(h) The wage-earning capacity of an injured employee in cases of partial disability under subdivision (c) (21) of this section or under subdivision (e) of this section shall be determined by his actual earnings of such actual earnings fairly and reasonably represent his wage-earning capacity: PROVIDED, HOWEVER, That if the employee has no actual earnings or his actual earnings do not fairly and reasonably represent his wage-earning capacity, the deputy commissioner may, in the interest of justice, fix such wage-earning capacity as shall be reasonable, having due regard to the nature of his injury, the degree of physical impairment, his usual employment, and any other factors or circumstances in the case which may affect his capacity to earn wages in his disabled condition, including the effect of disability as it may naturally extend into the future.

"(i) In cases under subdivision (c) (21) and subdivision (e) of this section, whenever the deputy commissioner determines that it

is for the best interests of an injured employee entitled to compensation, he may, with the approval of the Secretary, approve agreed settlements of the interested parties, discharging the liability of the employer for such compensation, notwithstanding the provisions of sections 915(b) and 916 of this title: **PROVIDED**, That the sum so agreed upon shall be payable in installments as provided in section 914(b) of this title, which installments shall be subject to commutation under section 914(j) of this title: **AND PROVIDED FURTHER**, That if the employee should die from causes other than the injury after the Secretary has approved an agreed settlement as provided for in this chapter, the sum so approved shall be payable, in the manner prescribed in this subdivision, to and for the benefit of the persons enumerated in subdivision (d) of this section."

8. Section 909, of the Longshoremen's and Harbor Workers' Compensation Act provides in part under the heading "Compensation for death" as follows:

"If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

"(a) Reasonable funeral expenses not exceeding \$400.

"(b) If there be a surviving wife or dependent husband and no child of the deceased, to such surviving wife or dependent husband 35 per centum of the average wages of the deceased, during widowhood, or dependent widowhood, with two years' compensation in one sum upon remarriage; and if there be a surviving child or children of the deceased, the additional amount of 15 per centum of such wages for each such child; in case of the death or remarriage of such surviving wife or dependent husband, if there be one surviving child of the deceased employee, such child shall have his compensation increased to 35 per centum of such wages, and if there be more than one surviving child of the deceased employee, to such children, in equal parts, 35 per centum of such wages increased by 15 per centum of such wages for each child in excess of one: **PROVIDED**, That the total amount payable shall in no case exceed 662/3 per centum of such wages. The deputy commissioner having jurisdiction over the claim may, in his discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement the appointment of a guardian for such purposes shall not be necessary.

"(c) If there be one surviving child of the deceased, but no surviving wife or dependent husband, then for the support of such child 35 per centum of the wages of the deceased; and if there be more than one surviving child of the deceased, but no widow or dependent husband, then for the support of such children, in equal parts 35 per centum of such wages increased by 15 per centum of such wages for each child in excess of one: **PROVIDED**, That the total amount payable shall in no case exceed 662/3 per centum of such wages.

"(d) If there be no surviving wife or dependent husband or child or if the amount payable to a surviving wife or dependent husband and to children shall be less in the aggregate than 66 2/3 per centum of the average wages of the deceased; then for the support of grandchildren or brothers and sisters, if dependent upon the deceased at the time of the injury, 15 per centum of such wages for the support of each such person and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of the injury, 25 per centum of such wages during such dependency. But in no case shall the aggregate amount payable under this subdivision exceed the difference between 66 2/3 per centum of such wages and the amount payable as hereinbefore provided to surviving wife or dependent husband and for the support of surviving child or children."

9. Guidance for the computation of the average weekly wage of the injured employee is found at section 910, "Determination of pay."

10. Section 906, under the heading "Time for commencement of compensation" provides in part that except for medical benefits provided no compensation shall be allowed for the first three days of the disability unless the injury results in disability of more than twenty-eight days. In such a case, compensation is allowed from the date of disability. This section further provides that compensation for disability shall not exceed \$54 per week. Except in cases of permanent total disability or death, the total recovery allowance payable to an employee as compensation for an injury may not exceed in the aggregate, the sum of \$17,280.*

11. The foregoing appears to have complete application to many activities of agency interest. The extent of coverage of this act may well be illustrated by the case of a test pilot for Republic Aviation. It was held by the court in the case of Republic Aviation Corp. v. Lowe, D.C.N.Y. 1946, 69 F. Supp. 472, affirmed 163 F.2d 18, that where a test pilot was killed while testing an airplane at Ie Shima, a former Japanese island, which was occupied by the United States Army prior to August 20, 1945, and employer of test pilot had a contract with the United States Army to furnish technical representatives and test pilots in connection with operations, servicing, repair, etc., of aircraft manufactured by employer, the test pilot's employment was under a contract that was included within the war-risk hazard provision. Since the Act has an application that is so broad as would allow coverage of a test pilot as well as the technical representatives, it is obvious that coverage would be afforded in almost any case that can be conceived for the utilization of employees of contractors by the Agency. It is to be noted that the liability of the employer to his employees is defined within the complex of this legislation and the present statute reaffirms the policy that the United States Government rather than the individual, the employer or the insurance carrier, shall pay the loss.

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*In case of total disability or death, the aggregate limitation of \$17,280 shall not apply, but in no event shall compensation exceed \$90 per week.